

Mitchell H. Shen, Esq. (CBN 297566)
Law Office of Mitchell H. Shen & Associates
617 S. Olive St., Ste. 810
Los Angeles, CA 90014
Tel (213) 878-0333; Fax (213) 402-2169
Email: MshenLaw@ gmail.com

Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IVAN SALAZAR ARROYO,

Petitioner,

v.

Christopher J. Larose,
Warden, Otay Mesa Detention Center;
Gregory J. Archambeault, *Field*
Office Director, U.S. Immigration and
Customs Enforcement;
Todd M. Lyons, *Acting Director,*
U.S. Immigration and Customs Enforcement;
Kristi Noem, *Secretary of United States*
Department of Homeland Security;
Pam Bondi, *Attorney General of the*
United States, in their official capacities,

Respondents.

Case No. '25CV2190 W MMP

**PETITION FOR WRIT OF
HABEAS CORPUS**

Expedited Hearing Requested

INTRODUCTION

1. PETITIONER/PLAINTIFF, Ivan Salazar Arroyo ("Petitioner" or "Mr.

1 Salazar”), by and through his undersigned counsel, hereby petitions this
2 Honorable Court to issue a writ of habeas corpus to release him on bond from
3 his continued detention in the custody of the United States Department of
4 Homeland Security, Immigration and Customs Enforcement (“DHS-ICE”) as
5 his continued detention is a violation of due process, and constitutes an
6 unlawful detention. In support of this petition, petitioner states by and through
7 counsel as follows:
8
9
10

11 **JURISDICTION**

- 12 2. This action arises under the Constitution, the Immigration & Nationality Act of
13 1990, as amended (“INA”), 8 U.S.C. §1101 et seq., and the Administrative
14 Procedure Act (“APA”), 5 U.S.C. §701 et seq. This Court has habeas
15 jurisdiction pursuant to 28 U.S.C. §2241, Art. 1, §9, Cl. 2 of the United States
16 Constitution (the “Suspension Clause”); and the common law. This Court may
17 also exercise jurisdiction pursuant to 28 U.S.C. §1331 and may grant relief
18 pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201 et seq., and the All
19 Writs Act, 28 U.S.C. §1651.
20
21 3. On May 11, 2005, Congress passed the REAL ID Act of 2005, Pub. L. No. 109-
22 13, 119 Stat. 231. The REAL ID Act divested federal district courts of
23 jurisdiction to review final orders of deportation, exclusion and/or removal.
24
25
26
27
28

1 However, federal district courts still retain jurisdiction through habeas corpus
2 over the detention of aliens.

3 4 VENUE

- 5 4. Venue lies in the United States District Court for the Southern District of
6 California, the judicial district of confinement, as the petitioner is physically
7 being held in custody at the Otay Mesa Detention Facility located in Otay
8 Mesa, CA. This is in accordance with the decision of the United States
9 Supreme Court in Rumsfeld v. Padilla, 124 S.Ct. 2711, 2725 (2004)
10 (“Whenever a §2241 habeas petitioner seeks to challenge his present physical
11 custody within the United States, he should name his warden as respondent and
12 file the petition in the district of confinement”).
13
14
15
16

17 REQUIREMENTS OF 28 U.S.C. § 2243

- 18 5. The Court must grant the petition for writ of habeas corpus or issue an order to
19 show cause (OSC) to the respondents “forthwith,” unless the petitioner is not
20 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the
21 Court must require respondents to file a return “within *three days* unless for
22 good cause additional time, not exceeding twenty days, is allowed.” *Id.*
23 (emphasis added).
24
25
26 6. Courts have long recognized the significance of the habeas statute in protecting
27 individuals from unlawful detention. The Great Writ has been referred to as
28

1 “perhaps the most important writ known to the constitutional law of England,
2 affording as it does a *swift* and imperative remedy in all cases of illegal restraint
3 or confinement.” Fay v. Noia, 372 U.S. 391, 400 (1963) (emphasis added).

5 **PARTIES**

6
7 7. Petitioner, Ivan Salazar Arroyo, is a native and citizen of Mexico who has been
8 held in continuing detention by DHS-ICE since June 19, 2025. He is currently
9 detained at the Otay Mesa Detention Center in Otay Mesa, CA.
10

11 8. Respondent, Christopher J. Larose is sued in his official capacity as the Warden
12 of the Otay Mesa Detention Center in Otay Mesa, CA. The warden has chief
13 executive authority over the administration of the Otay Mesa Detention Facility.
14 In this capacity, he has direct responsibility over the confinement of Ivan
15 Salazar Arroyo.
16
17

18 9. Respondent, Gregory J. Archambeault, is sued in his official capacity as the
19 Director of the San Diego Field Office of U.S. Immigration and Customs
20 Enforcement. Respondent Archambeault is a legal custodian of Petitioner and
21 has authority to release him.
22
23

24 10. Respondent, Todd M. Lyons, is sued in his official capacity as the Acting
25 Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is
26 a legal custodian of Petitioner and has authority to release him.
27
28

1 11. Respondent, Kristi Noem, is sued in her official capacity as the Secretary of the
2 U.S. Department of Homeland Security (DHS). In this capacity, Respondent
3 Noem is responsible for the implementation and enforcement of the
4 Immigration and Nationality Act, and oversees U.S. Immigration and Customs
5 Enforcement the component agency responsible for Petitioner's continued
6 detention. Respondent Noem is a legal custodian of Petitioner.
7
8

9 12. Respondent, Pam Bondi, is sued in her official capacity as the Attorney General
10 of the United States and the senior official of the U.S. Department of Justice
11 (DOJ). In that capacity, she has the authority to adjudicate removal cases and to
12 oversee the Executive Office for Immigration Review (EOIR), which
13 administers the immigration courts and the BIA. Respondent Bondi is a legal
14 custodian of Petitioner.
15
16
17

18 **STATEMENT OF FACTS**

19 13. Ivan Salazar Arroyo is a 42 year-old, native and citizen of Mexico, and initially
20 entered this country in or about 2004; over 21 years ago. He was never
21 apprehended by border agents and entered the U.S. without inspection.
22
23

24 14. Having resided in the U.S. for over 21 years; he has extensive family ties
25 including his U.S. Citizen wife; Yoanna Yajaira Salazar, and his U.S. Citizen
26 children: F [REDACTED] M [REDACTED] (step-son), M [REDACTED] B [REDACTED] (step-son), B [REDACTED]
27
28

1 B [REDACTED] (step-daughter), and I [REDACTED] S [REDACTED] (son). He has worked in
2 construction for many years.
3

4 15. He was encountered by agents of ICE during a Los Angeles-area operation at
5 Home Depot on June 19, 2025 aka "the Los Angeles ICE Raids". Mr. Salazar
6 currently has pending removal proceedings pursuant to 8 CFR §1240.
7

8 16. While his removal proceedings are pending, the Immigration Judge ("IJ")
9 granted a bond of \$7,500 pursuant to 8 USC §1226(a)(2)(A). **See Order of**
10 **Immigration Judge, Exhibit A.** On July 21, 2025, The Department of
11 Homeland Security filed a form EOIR-43: Notice of ICE intent to Appeal
12 Custody Redetermination; effectively automatically staying the Immigration
13 Judge's decision pursuant to 8 CFR § 1003.6. **See EOIR-43, Exhibit A.** 8
14 CFR § 1003.6 provides a stay of the Immigration Judge's bond order that lasts
15 through appeal to the Board of Immigration Appeals that lapses should no
16 appeal be filed within 10 business days. *See* 8 CFR § 1003.6.
17
18
19
20

21 17. Under this administration, it appears the use of an EOIR-43 and appealing the
22 Immigration Judge is intended to keep the alien detained until their deportation
23 or they give up and sign their removal.
24

25 18. On July 29, 2025, Petitioner was notified an appeal was filed on July 28, 2025.
26 **See BIA Receipt and IJ Bond Memorandum, Exhibit A.** To this date, Mr.
27 Salazar has been detained for over 60 days pending removal proceedings. His
28

1 next hearing before the Immigration Judge is scheduled for September 10,
2 2025.

3
4 19.If released, Mr. Salazar would return to his home in Los Angeles, CA and
5 reside with his family; who have promised to provide shelter and take him to all
6 of his future hearing dates.
7

8 EXHAUSTION OF REMEDIES

9
10 20. There is no statutory exhaustion requirement in 28 U.S.C § 2241. However, the
11 Court may require prudential exhaustion. Courts may waive the prudential
12 exhaustion requirement if “administrative remedies are inadequate or not
13 efficacious, pursuit of administrative remedies would be a futile gesture,
14 irreparable injury will result, or the administrative proceedings would be void.”
15 Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (quoting S.E.C. v. G.C.
16 George Sec., Inc., 637 F.2d 685, 688 (9th Cir. 1981). In detention cases,
17 appeals to the Board of Immigration Appeals (BIA) can take months or years.
18 Thus, requiring habeas petitioners to appeal to the BIA to prudentially exhaust
19 is not efficient, would cause irreparable harm by continuing to deprive a person
20 of their liberty, and/or would be futile.
21

22
23
24
25 21. Petitioner, Ivan Salazar Arroyo, has exhausted his administrative remedies to
26 the extent required by law, and his only remedy is by way of this judicial action.
27
28 Despite the fact that Mr. Salazar was granted a bond, the Department of

1 Homeland Security has automatically stayed the Immigration Judge's decision
2 without due process to the Petitioner. Given an appeal before the BIA is likely
3 to exhaust months where Mr. Salazar will continue to be deprived of his life and
4 liberty; requiring waiting for DHS to brief the issue and waiting for the BIA to
5 decide on the appeal causes irreparable harm to Mr. Salazar.
6
7

8 22. Additionally, while Mr. Salazar is detained, his removal proceedings continue
9 in an expedited manner intended on ordering deportation before release; such
10 that he is no longer eligible for a bond post-removal order.
11

12 23. Further, wherefore any efforts to obtain release from custody from the
13 Department of Homeland Security or from the Board of Immigration Appeals
14 would be futile.
15

16 24. Lastly, Mr. Salazar is currently in removal proceedings, so there is no
17 possibility of removal in the near future until proceedings are completed. The
18 federal district court retains authority to grant release on bond or any other
19 condition of release.
20
21

22 CLAIMS FOR RELIEF

23 **COUNT ONE**

24 **Violation of Fifth Amendment Right to Due Process**

25
26 25. Continued detention, despite a favorable bond ruling, constitutes a violation of
27 the Fifth Amendment's Due Process Clause. The Fifth Amendment's Due
28

1 Process Clause requires that immigration detention and bond proceedings
2 adhere to fundamental principles of fairness and procedural protections. *See*
3 U.S. Const. amend. V; Mathews v. Diaz, 426 U.S. 67, 78, 96 S. Ct. 1883, 48 L.
4 Ed. 2d 478 (1976); *see also* Zadvydas, 533 U.S. at 690 (civil detention violates
5 due process unless special, nonpunitive circumstances outweigh an individual's
6 interest in avoiding restraint); Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S.
7 Ct. 893, 47 L. Ed. 2d 18 (1976) (due process is flexible, and the protections
8 depend on the situation, considering the private interest at issue, the risk of
9 erroneous deprivation of that interest through the procedures used, and the
10 Government's interest). These protections extend to deportation proceedings.
11 Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993).

12 26. Although the Immigration Judge had ordered Petitioner to be released on bond,
13 by filing an EOIR-43, the Government stayed that order without making any
14 showing of dangerousness, flight risk, or any other factor justifying detention.
15 “Simply by fiat—without introducing any proof and without immediate judicial
16 review—the Government effectively overruled the bond decision and kept
17 Petitioner detained.” Mohammed H. v. Trump, 2025 U.S. Dist. LEXIS 117197.
18 Similarly here, the Government has given Petitioner no chance to contest the
19 Government's case for detention. Mathews, 424 U.S. at 348-49 (“The essence
20 of due process is the requirement that a person in jeopardy of serious loss (be
21
22
23
24
25
26
27
28

1 given) notice of the case against him and opportunity to meet it.") The
2 government's invocation of the automatic stay here contorts 8 CFR § 1003.6
3 into an unfair procedure. *Cf. Bridges*, 326 U.S. 135, 152-53, 65 S. Ct. 1443, 89
4 L. Ed. 2103 (administrative rules are designed to afford due process and to
5 serve as "safeguards against essentially unfair procedures").
6
7

8 27. Under the circumstances of this case, invoking the automatic stay violated
9 Petitioner's due process rights. Mr. Salazar has been granted a legal pathway to
10 release by a neutral adjudicator (the IJ). The IJ took into account the entirety of
11 the evidence submitted, and decided that Petitioner was not a risk of flight nor a
12 danger to society. ICE's unilateral refusal to honor that order is arbitrary and
13 unjust, and renders the IJ's order meaningless.
14
15

16 28. For those reasons, petitioner's continued detention is a violation of his 5th
17 Amendment due process rights. Accordingly, based on these arguments
18 Petitioner's continued detention constitutes a violation of his due process rights
19 under the 5th Amendment.
20
21

22 **COUNT TWO**
23 **Unlawful detention creating a risk of prolonged detention**

24 29. ICE's continued detention is no longer supported by a legal basis once an IJ has
25 granted bond. The purpose of detention has been met (i.e., the individual has
26 appeared in court and is deemed not a flight risk or danger), and further
27
28

1 detention is therefore without lawful justification. Additionally, the automatic
2 stay provision does not impose strict time limits for the resolution of the appeal
3 by the BIA, which can result in prolonged detention without a final decision.
4 This creates a substantial risk of erroneous deprivation of liberty, as detainees
5 remain in custody based solely on ICE's invocation of the stay, often without
6 any substantive review of the underlying bond decision. Bezmen v. Ashcroft,
7 245 F. Supp. 2d 446, Ashley v. Ridge, 288 F. Supp. 2d 662, Mohammed H. v.
8 Trump, 2025 U.S. Dist. LEXIS 88471.

12 30. While ICE has the right to appeal the IJ's bond decision to the BIA, such an
13 appeal should not automatically stay the IJ's order. The Attorney General's
14 discretionary authority over bond decisions is not absolute and is subject to
15 judicial review for constitutional claims and legal errors. Perez v. Napolitano,
16 2016 U.S. Dist. LEXIS 63667, 8 USCS § 1226. In this case, even if the Bond
17 were appealed and sustained, the case would return back to the Immigration
18 Judge to enter a new decision based on the Board of Immigration Appeals'
19 decision. At that point, Mr. Salazar would retain the right to pursue all legal
20 remedies available to him, which could eventually take him back to the Board
21 of Immigration Appeals, or the Ninth Circuit. Keeping him in detention at the
22 Otay Mesa Detention facility during this entire time would "effectively punish
23
24
25
26
27
28

1 Mr. Salazar for pursuing applicable legal remedies.” Leslie v. Attorney General
2 of the United States, 678 F.3d 265, 271 (3d Cir. 2012).
3

4 31. Here, ICEs continued detention of Petitioner without bond, despite the IJs
5 determination, constitutes an unlawful deprivation of liberty and creates the risk
6 of unlawful prolonged detention.
7

8 **PRAYER FOR RELIEF**

9 Wherefore, Petitioner respectfully requests this Court to grant the following:
10

- 11 (1) Assume jurisdiction over this matter;
- 12 (2) Issue an Order to Show Cause ordering Respondents to show cause
13 why this Petition should not be granted within *three* days.
- 14 (3) Declare that Mr. Salazar’s detention violates the Due Process Clause
15 of the Fifth Amendment;
16
- 17 (4) Issue an order to ICE to accept payment of the bond amount set by the
18 immigration judge;
19
- 20 (5) Issue a Writ of Habeas Corpus ordering Respondents to immediately
21 release Petitioner upon payment of the bond amount set by the immigration
22 judge;
23
- 24 (6) Award Petitioner attorney’s fees and costs under the Equal Access to
25 Justice Act, 28 U.S.C. §2412, and on any other basis justified under law; and
26
- 27 (7) Grant any further relief this Court deems just and proper.
28

1 Grant any other and further relief that this Honorable Court deems just and proper.
2
3

4 Respectfully submitted,

5 Ivan Salazar Arroyo
6

7 By his attorney:

8 Dated: 08/25/2025 Signed: /s/ Mitchell H. Shen
9

10 MITCHELL H. SHEN, ESQ.

11 Attorney for Petitioner

12 Law Office of Mitchell H. Shen & Associates

13 617 S. Olive St., Ste. 810

14 Los Angeles, CA 90014

15 Tel. (213) 878-0333; Fax (213) 402-2169

16 E-mail: MshenLaw @ gmail.com
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION OF COMPLAINT

I, Mitchell H. Shen, Esq., state under penalty of perjury that I am the attorney for the petitioner Ivan Salazar Arroyo in the foregoing petition, and declare the facts alleged here to be true, except those made on information and belief, which I believe to be true, and further state that the sources of my information and belief are documents and information provided to me by the petitioner and his associates and family members.

Los Angeles, CA

Signed: /s/ Mitchell H. Shen

Dated: 08/25/2025

MITCHELL H. SHEN, ESQ.
Attorney for Petitioner
Law Office of Mitchell H. Shen & Associates
617 S. Olive St., Ste. 810
Los Angeles, CA 90014
Tel. (213) 878-0333; Fax (213) 402-2169
E-mail: MshenLaw @ gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via Certified Mail / Return

Receipt to:

US Attorney's Office for the Southern District of California,
880 Front Street, Room 6293,
San Diego, CA 92101;

Christopher J. Larose, Senior Warden, Otay Detention Facility
7488 Calzada de la Fuente,
San Diego, CA 92154

Gregory J. Archambeault, Field Office Director
U.S. Immigration and Customs Enforcement (ICE)
880 Front Street #2242
San Diego, CA 92101

Todd M. Lyons, Acting Director
U.S. Immigration and Customs Enforcement (ICE)
500 12th St SW
Washington, DC 20536

Kristi Noem, Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Pam Bondi, Attorney General of the United States
950 Pennsylvania Ave., N.W. Room 45-45
Washington, DC 20530-0001; upon the date given below.

Date: 08/25/2025

Signature: /s/ Mitchell H. Shen
MITCHELL H. SHEN, ESQ.
Attorney for Petitioner
Law Office of Mitchell H. Shen & Associates
617 S. Olive St., Ste. 810
Los Angeles, CA 90014
Tel (213) 878-0333; Fax (213) 402-2169
E-mail: MshenLaw @ gmail.com